

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Solomon Thomas-El,

Case No. 24-CV-3476 (NEB/SGE)

PLAINTIFF,

v.

ORDER

Tarek Kekic, Nhia Thor, and Hennepin
County Self-Insured,

DEFENDANTS.

Plaintiff Solomon Thomas-El (also known as Soloman Tomas) has applied for *in forma pauperis* (“IFP”) status. *See* Appl. to Proceed in Dist. Ct. Without Prepaying Fees or Costs, ECF No. 2 (“IFP Application”). Because Thomas-El is a prisoner, *see* 28 U.S.C. § 1915(h), the IFP Application falls under 28 U.S.C. § 1915(b), which mandates an initial partial filing fee for prisoners seeking IFP status in civil actions. This fee is 20 percent of the greater of (1) the average monthly deposits to the plaintiff’s facility trust account in the 6 months immediately before the complaint’s filing, or (2) the average balance in the plaintiff’s account during the same period. *See* 28 U.S.C. § 1915(b)(1).

The Certificate of Authorized Prison Official that Thomas-El has submitted, *see* ECF No. 11 (“Certificate”), indicates that he must submit an initial partial filing fee of \$4.00.¹ This action will not proceed until Thomas-El pays this fee. If he fails to pay

¹ The Certificate states that Thomas-El’s average monthly deposits during the preceding 6-month period were \$20.00, while his average balance during the same period was \$9.50. *See* Cert. 1. Because the deposits amount exceeds the balance amount, Thomas-

within 21 days of this Order's date, the Court will consider the action abandoned and recommend its dismissal without prejudice for lack of prosecution. *See* Fed. R. Civ. P. 41(b).

Finally, the Court offers Thomas-El the following warnings:

- If Thomas-El proceeds with this action by paying the \$4.00 initial partial filing fee, he will have to pay the remaining \$351.00 of the \$350.00 statutory filing fee in installments. Officials at his confinement facility will be informed of this and authorized to withdraw funds from his account to remit to the Court, as per § 1915(b), regardless of the action's outcome.
- Upon payment of the initial partial filing fee, the Court will review the Complaint to determine if it states a viable claim within the Court's jurisdiction.² If the Court finds the Complaint frivolous or malicious, or that it fails to state a claim for relief, Thomas-El will incur a "strike" under 28 U.S.C. § 1915(g). Accumulating three strikes will significantly restrict his ability to proceed IFP in federal court.

El's initial partial filing fee, under 28 U.S.C. § 1915(b)(1), is 20 percent of the average deposits, or \$4.00.

² Thomas-El should consider carefully whether to proceed; the Complaint has significant problems. It appears his claims, related to a January 2024 traffic stop, would undercut his conviction in *State v. Tomas*, No. 27-CR-24-1952 (Minn. Dist. Ct.). To bring such claims, a plaintiff generally must show a "favorable termination" of the relevant conviction. *See, e.g., Mitchell v. Kirchmeier*, 28 F.4th 888, 895 (8th Cir. 2022) ("[T]he Supreme Court [has] held that a district court must dismiss a § 1983 claim if 'a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence,' unless the plaintiff proves 'that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.'" (quoting *Heck v. Humphrey*, 512 U.S. 477, 487 (1994))). There is no indication of such a favorable termination here. Given this and other potential issues that could arise as the case proceeds, Thomas-El may wish to pause before committing \$350.00 to this litigation.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff Solomon Thomas-El must pay an initial partial filing fee of at least \$4.00 within 21 days of this Order's date.
2. Should Thomas-El fail to pay the initial partial filing fee, the Court will recommend dismissing this action without prejudice for failure to prosecute.

Dated: October 10, 2024

s/ Shannon G. Elkins
SHANNON G. ELKINS
United States Magistrate Judge

Thomas-El v. Kekic
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